

## FREE SPEECH for STUDENTS in the 21<sup>st</sup> CENTURY

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### *Beussink v. Woodland R-IV School District, Mo. 1998*

- Website done at home was critical of high school, used vulgar language.
- No disruption of school.
- **10 day suspension overturned by court.**
- Court applied *Tinker* test.

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### *Emmett v. Kent School District No. 415, Wash. 2000*

- Local TV reported student's website included a "hit list."
- Site had mock obituaries and a poll for "who should die next."
- Obits were based on a school writing assignment.
- **Court issued TRO overturning 5-day suspension. *Tinker* test.**

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*Killion v. Franklin Regional S.D., Pa.*  
2001

- Website's "Top 10" list was vulgar, offensive and aimed at the A.D. Done at home, but it found its way to the school.
- A very upset A.D., but no disruption.
- **Court overturned 10-days suspension.**
- *Tinker* test.

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*Coy v. North Canton City Schools,*  
Ohio 2002

- Crude, juvenile website labeled three other students as "losers." Done at home.
- **Court strikes down Code of Conduct provision that authorized discipline for "any action or behavior judged by school officials to be inappropriate..."**
- *Tinker* test applied.

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*J.S. v. Bethlehem Area S.D., Pa.* 2002

- "Teacher Sux" website explained "Why She Should Die" and included depiction of teacher's decapitation and solicited contributions for a hit man.
- Teacher took leave of absence due to stress.
- **Court affirmed expulsion.**
- Court used *Tinker and Fraser* tests.

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*Mahaffey v. Aldrich*, 2002 Michigan

- Student contributed to "Satan's web page" which included list of "people I wish would die."
- Was not communicated to anyone at the school and did not disrupt school.
- **Court overturned suspension.**
- Court applied *Tinker* test.

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*Flaherty v. Keystone Oaks S.D.*, Pa.  
2003

- Trash talk on a message board concerning an upcoming volleyball game.
- **Court overturned disciplinary action.**
- Handbook provision was overly broad and vague.

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*Wilson v. Hinsdale Elementary S.D.*  
181, Ill. 2004

- Student wrote, recorded and distributed a CD with a song: "Gonna Kill Mrs. Cox's Baby."
- **Court upheld 50-day expulsion.**
- First Amendment issues were not raised—court did not want to second guess school officials as to severity of penalty.

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*Porter v. Ascension Parish School Board*, 5<sup>th</sup> Cir. 2004

- Drawing of violent, racially offensive attack on school inadvertently brought to school by another student.
- **Court held drawing was protected by 1<sup>st</sup> Amendment but principal who ordered student's removal to DAEP was immune from liability.**
- Court noted how unclear the law is.

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*Dwyer v. Oceanport S.D.*, N.J. 2005

"I Hate Maple Place" website solicited student comments, identified the "worst teacher" and called the principal a dictator.

**Court overturned 5-day suspension and suspension from extracurriculars. But no liability for school officials.**

Court applied *Tinker*.

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*Latour v. Riverside, Pa.* 2005

- Student recorded four rap songs with violent lyrics and a reference to a middle school girl. The girl and two other students withdrew from school.
- **Court enjoined the school from issuing its two-year expulsion.**
- Songs were not communicated to the other kids; court applied *Tinker*.

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*Requa v. Kent S.D. No. 415, Wash., 2007*

- YouTube video of teacher from secret recording amounted to sexual harassment. Student created the video and posted a link to it from his MySpace page.
- **Court affirmed suspension.**
- School based its action on what the student did at school (the taping) rather than what he did at home.

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*Layshock v. Hermitage S.D., Pa. 2007*

- Parody profile of principal on MySpace became common knowledge at school.
- **Court overturned disciplinary action, but protected school officials from personal liability.**
- Court cited *Tinker* and the lack of disruption at school.

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*Ponce v. Socorro ISD, 5<sup>th</sup> Cir. 2007*

Student's journal described Columbine-style attack on the school.

**Court upheld DAEP placement despite absence of any disruption of school.**

Court applied Bong Hits case—not *Tinker*.

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*Wisniewski v. Weedsport CSD*, 2<sup>nd</sup> Cir. 2007

- Student's IM icon showed a gun firing a bullet at head with blood splattering and caption: Kill Mr. VanderMolen. Mr. V found out about it.
- **Court upholds suspension to alternative program.**
- Court applied *Tinker*.

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*Doninger v. Niehoff*, 2<sup>nd</sup> Cir. 2008

- Student council member refers to central office personnel as "douchebags" on blog entry calling for calls to the principal to "piss her off more."
- **Court upheld removal from student council.**
- Court applied *Fraser* and *Tinker*.

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*O.Z. v. Long Beach USD*, Calif. 2008

- Student created slide show depicting the murder of a teacher, sent it to friend who posted on YouTube. Teacher found it, suffered stress.
- **Court upheld transfer of student to another campus.**
- Court applied *Tinker*.

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*J.S. v. Blue Mountain S.D., Pa. 2008*

- Student created phony MySpace profile of principal depicting him as pedophile and sex addict. Word spread through school.
- **Court upheld 10-day suspension.**
- Court applied *Fraser* rather than *Tinker* even though this occurred off campus. Court notes the distinction is getting blurry.

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*Barnett v. Tipton County, Tenn. 2009*

- Students created unflattering fake internet profiles of assistant principal and coach. News reporter and a parent took them seriously.
- **Court upheld removal of student to alternative school.**
- Court did not buy the "parody" argument.

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**Keep Your Perspective**

- Many of these cases illustrate immaturity and adolescent boundary-testing rather than any real threat to school operations.
- Do not overreact.
- Don't call the cops. Call the parents.
- Consider responding with education rather than punishment.

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### The Parents

- Usually a good idea to seek to enroll the parents in finding the solution.
- Majority of parents will agree with the school that the student has acted inappropriately.
- Even when they don't, they will appreciate being consulted.

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### Consider....

- If the parents first hear of this from the police, they are likely to get defensive.
- If the school treats them as allies, partners in the educational process, you are more likely to get a positive response.

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### What They Said v. How They Said It

- If you can prove that the student expressed himself in a vulgar, sexually explicit or otherwise highly offensive manner at a school event, you are in *Fraser* territory.
- That means your disciplinary action is likely to be sustained.

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## What is Protected Speech?

- Ask yourself: Am I upset with:  
**HOW THEY SAID IT?**
- Or with **WHAT THEY SAID?**
- Do not take disciplinary action based on **IDEAS, THOUGHTS** or **OPINIONS** expressed.

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## How They Said It

- This means the words or images used—were they vulgar, profane, sexually graphic?

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## What They Said

- This means the ideas, thoughts or opinions expressed.
- This is what the First Amendment protects.
- Disciplinary action cannot be taken based on what they said, but rather, because of the disruption it was likely to cause.

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## Keep Up!

- Technology changes fast.
- Law evolves slowly.
- But the courts are beginning to see that technology makes the distinction between "on campus" and "off campus" less meaningful than it used to be.
- Stay tuned.

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